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Attorneys for Plaintiff Philip Morris USA Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PHILIP MORRIS USA INC.,

Plaintiff,

v.

No. 07 Civ. 8359 (LAK)(GWG)

A & V MINIMARKET, INC., a New York
corporation doing business as A & V MINI
MARKET, *et al.*,

Defendants.

REQUEST FOR CERTIFICATE OF DEFAULT

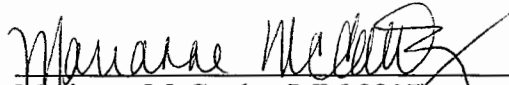
TO THE CLERK OF THE COURT:

Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure and Local Civil Rule 55.1, Plaintiff Philip Morris USA Inc. hereby requests that you enter default in this action against Defendant JJP Food Center, Inc., a New York corporation doing business as 1086 JJP Food Center, Inc. ("JJP Food"). Default should be entered because JJP Food has not answered or responded to the Complaint within the time prescribed by Rule 12 of the Federal Rules of Civil

Procedure or otherwise appeared in this action. The facts justifying the entry of default are set forth in the attached Affidavit of Marianne McCarthy in Support of Request for Certificate of Default, and a proposed Clerk's Certificate of Default is also attached hereto.

Dated: June 2, 2008

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No. 07 Civ. 8359 (LAK)(GWG)

A & V MINIMARKET, INC., a New York
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Defendants.

AFFIDAVIT OF MARIANNE MCCARTHY
IN SUPPORT OF REQUEST FOR CERTIFICATE OF DEFAULT

STATE OF NEW YORK)

)

ss.:

COUNTY OF NASSAU)

MARIANNE MCCARTHY, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and am Of Counsel to the law firm of
Cullen and Dykman LLP, co-counsel to Heller Ehrman LLP, attorneys for Plaintiff Philip Morris

USA Inc. I am fully familiar with the facts and circumstances surrounding this action. I make this declaration in support of Philip Morris USA Inc.'s request for a Certificate of Default against Defendant JJP Food Center, Inc., a New York corporation doing business as 1086 JJP Food Center, Inc. ("JJF Food"), pursuant to Fed. R. Civ. P. 55(a) and Local Civil Rule 55.1.

2. Upon information and belief, JJP Food is not an infant, in the military, or an incompetent person.

3. Philip Morris USA Inc. commenced this action on September 26, 2007 by the filing of the Summons and Complaint. A true and correct copy of the Summons and Complaint (without exhibits) is annexed hereto as Exhibit A.

4. In accordance with Fed. R. Civ. P. 4(h)(1), Philip Morris USA Inc. effected service of process on JJP Food by serving a copy of the Summons and Complaint on Nelson Chalas, a manager and authorized agent of JJP Food, on October 1, 2007, at the business address of 1086 Boston Road, Bronx, New York 10456. These facts are set forth in the Affidavit of Service of Curtis D. Duncan, sworn to October 2, 2007, a true and correct copy of which is annexed hereto as Exhibit B.

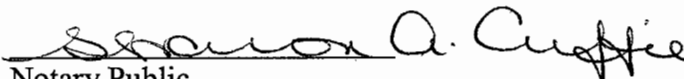
5. Under Fed. R. Civ. P. 12(a)(1)(A), JJP Food was required to answer or respond to the Complaint no later than October 22, 2007.

6. JJP Food has not answered the Complaint or otherwise defended the action, and the time for JJP Food to do so has expired.

WHEREFORE, on behalf of Philip Morris USA Inc., I respectfully request a Certificate of Default against JJP Food.


MARIANNE MCCARTHY

Sworn to before me this
2nd day of June, 2008.


Notary Public

Sharon A. Cuffie
Notary Public, State of New York
No. 01CU6020584
Qualified in Suffolk County
Commission Expires March 01, 20 11